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09/781,581	02/12/2001	John P. Rebhorn	5487USA	9718

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DICKE, BILLIG & CZAJA  
Suite 1250  
701 Building  
701 Fourth Avenue South  
Minneapolis, MN 55415

EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
1761	9

DATE MAILED: 11/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/781,581	REBHORN ET AL.
Examiner	Art Unit	
Robert Madsen	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

Extensions of time may be available under the provisions of 37 CFR 1.135(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 24 July 2002.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-33 and 39-43 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-33 and 39-43 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_

4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_

Application/Control Number: 09/781,581  
Art Unit: 1761

### **DETAILED ACTION**

The amendment filed July 24, 2002 has been entered. Claims 1,15,19, 20-22,24, and 25 have been amended, claims 39-43 have been added, and claims 34-38 have been cancelled. Claims 1-33,39-43 remain pending in the application.

#### ***Terminal Disclaimer***

The terminal disclaimer filed on July 24, 2002 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of Application No. 09/781,583 has been reviewed and is accepted. The terminal disclaimer has been recorded.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 20,39,43 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claims 20 and 39, the limitation of the bottom of the compartment having " a non-circle perimeter" . Applicant discloses "the bottom is preferably circular

in transverse cross-section" (Page 10 ,lines 9-11). However, applicant does not suggest any other perimeter shapes.

Regarding claim 43, the recitation of "the lip is not snap-fitted to the rim" contradicts the applicant's specification: "...the lip is permanently secured to the rim , for example with an ultrasonic weld. Alternatively, other attachment techniques, such as adhesive, mechanical fasteners, snap-fit , etc. can be utilized." (Page 15, line 32 to Page 16, line 1). Thus, there is no support for the negative recitation.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,4,5,7,15,18,20,22,23,24,39,40,41,42,43 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Doyle (US 3741427). See Figures, Column 2, lines 1-54 and Column 2, line 65 to Column 3, line 10.

Claims 25,28, and 33 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Doyle (US 3741427). See Figures, Column 2, lines 1-54 and Column 2, line 65 to Column 3, line 10.

Claims 20 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Silver (US 4159066).

Regarding claims 20 and 22, Silver teaches:

a first a first outer compartment (i.e. item 1), which is completely sealed other than the portion in communication with a pour opening as recited in claim 22 (i.e. sealed above with cover 30 and sealed between the compartments via sealing rings 17), with a rim (item 5) and a bottom (item 3);

a second inner compartment (i.e. item 11) with a lip at the top of the side wall (i.e. defined by the distance "W") and a base (item 13), which has a non-circular perimeter (i.e. due to item 18 in the Figure and also Column 7, lines 2-4)

a pour opening formed through the lip (item 20), offset from the opening of the second compartment

a cover (item 30) secured to the lip (via items 33 and 21)  
and a passage way is established between the two compartments (item 18/19) that connects the first compartment with the pour opening as recited in claims 20 and 22(See Figures, Column 3, line 5 to Column 4, line 24).

Claims 25 and 28 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lin (US 4582197). See Figures 1 and 4, Column 1, line 35-Column 2, line 48.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1-7,9,10,12-19,22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickerson (5706980) in view of Siegel et al. (US 5209909)

Regarding claims 1-7,12-19,22-24, Dickerson teaches:

a first outer milk-containing compartment (item 20 of the Figures), as recited in claims 2,3, 18, and 19,which may be completely sealed as recited in claim 6 when not used and completely sealed except for the pour opening 22 during use(Column 5, line 34- Column 6, line 15), may be made of flexible material to control flow as recited in claim 13 (Column 10, lines 34-40), and has a rim (item 37 of the Figures)and a bottom; a second inner cereal-containing compartment (item 22), as recited in claims 2, 3,15-17, with a lip (item 32) that is affixed to the rim (item 35), as recited in claim 5 and 24 via a seal surface( item 29) and a cover (item 24) that is sealed to the lip that encompasses the opening, as recited in claim 23 (Figure 3, Column 5, line 63 to Column 6, lines 13, Column 8, lines 55-67);

a lip, in some embodiments, is substantially parallel to the lower plane defined by the bottom since Dickerson teaches the entire first compartment may be cylindrical when the first compartment is insulated, instead of just the liquid containing portion as

shown in Figure 3 (Column 5, lines 34-45, Column 8, lines 55-59) as recited in claims 7 and 24.

a pour hole, as recited in claim 15, formed through the lip, which is formed a recess in the second compartment as recited in claim 14 (See Figure 6A);  
a spout formed in the first compartment as recited in claim 12(See Figure 6B around items 28 and 32), a cover secured to the lip (item 24 in Figure 5);  
and a passage way (item 86) is formed between the two compartments that connects the first compartment with the pour opening as recited in claims 1,15, 22 , and 24(Figures, Column 3, lines 10-60). However, Dickerson is silent in teaching the rim and lip *extend radially outwardly* as recited in claims 1,15, and although Dickerson teaches the lip is affixed to the rim (via item 35) is silent in teaching the lip *rests* on the rim as recited in claim 4, or is *permanently* affixed to the rim, as recited in claim 24.

Siegel also teaches two compartments that are nested and attached by affixing the lip to the rim: a first outer compartment (i.e. item 60 of Figures 5-7) is completely sealed (See Figure 6, Column 5, lines 49-62) and has a rim that extends radially, as recited in claims 1 and 15; a second inner compartment has a lip that extends radially (See Figure 7) and rests on *and* is sealed to the rim (item 70) as recited in claims 4 and 24(Column 4, line 59 to Column 5, line 6). Additionally like Dickerson, Siegel teaches a pour opening formed through the lip (items 82/84), which is formed by a recess in the second compartment , a cover secured to the lip (item 102) that encompasses the pour opening, and a passage way (item 86) is formed between the two compartments that connects the first compartment with the pour opening (figures 5-7, Column 4, lines 50-

64, Column 2, 33-68). Thus, Siegel is relied on as evidence of the conventionality of affixing the lip to rim by extending the lip and rim in the radial direction, *resting* the lip on the rim as recited in claim 4, and *permanently* affixing to the rim, as recited in claim 24. Therefore, it would have been obvious to modify Dickerson and extend the lip and rim radially such that the lip rests on and is affixed to the rim, since one would have been substituting one means of affixing the lip of a second compartment to the rim of a first compartment for another for the same purpose: providing a sealed nesting arrangement of the second compartment within the first compartment that allows for dispensing of the contents of the first compartment.

Regarding claim 9, Dickerson teaches a pour hole is formed with the lip and that the hole must be sized to provide control over the milk flow (Column 4, line 65-Column 5, line 10), but Dickerson is silent in teaching any particular radius width for the annular lip. Siegel, however, teaches when lip extends radially the lip contains the pour hole, and the lip is affixed to the rim by adhesive or welding means (Column 4, line 64-Column 5, lines 15, Column 2, lines 34-68). Therefore, to select any particular width of the lip would depend on (1) the desired pour hole size/control over the milk flow and (2) the width required to sufficiently seal the lip to the rim by adhesive or welding since Dickerson teaches the pour hole must be sized to control milk flow and Siegel teaches the lip that extends radially the lip contains the pour hole, and the lip is affixed to the rim by adhesive or welding means.

Regarding claim 10, although Dickerson is silent in teaching any particular radius size for the pour opening, Dickerson does teach the liquid channel is sized to assist in

providing control of the appropriate ratio of liquid to dry product to be consumed (Column 4, line 65-Column 5, line 10). Therefore, to select any particular radius for the pour opening would have been an obvious result effective variable of the desired liquid to dry product ratio during consumption.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dickerson (5706980) in view of Siegel et al. (US 5209909), as applied to claims 1-7,9,10,12-19,22-24 above, further in view of Ness (US 5753289)

Regarding claim 8, although Dickerson teaches the container is meant to be hand-held, Dickerson is silent in teaching the diameter of the first compartments, (Column 4, lines 51-64). Ness, who also teaches a hand held two-compartment container, for dispensing milk and cereal (Abstract and Figures). Ness teaches the size of such a container depends on the age of the intended user , suggest the particular volume of milk and cereal for an adult versus a child, and even suggests an outer diameter (i.e. the equivalent to Dickerson's first compartment diameter) for adults of approximately 3 inches. Ness further teaches such containers preferably fit into a cup holder in a car (Column 6, lines 22-53). Therefore, to select any particular diameter for the bottom of the first compartment would have been an obvious result effective variable of (1) age of the intended user (2) the intended volume of milk/cereal (3) intended use of the container (i.e. in a car) since Ness teaches a hand held two compartment container, for dispensing milk and cereal should be sized approximately 3 inches in diameter for adults, smaller for children, should be sized to hold a particular volume of

milk and cereal (larger for adults, smaller for children), and sized to fit into a car cup holder.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dickerson (5706980) in view of Siegel et al. (US 5209909) as applied to claim 1-7,9,10,12-19,22-24 above, further in view of Ours et al. (US 6264068 B1).

Dickerson is silent in teaching a radial extension on the lip at the pour opening. Ours et al., like Dickerson, also teaches a handheld solid/liquid container that dispenses the liquid contained in a lower compartment (Dickerson's first compartment) along with the solid contained in an upper compartment (Dickerson's second compartment). Ours et al. are relied on as further evidence of providing a radial lip extension from the solid compartment (i.e. the compartment situated above item 60 of Figures 6A and 6B) in order to reduce spilling of the liquid and promote pouring of the solid material (Abstract, Column 2, lines 48-63). Therefore, it would have been obvious to modify the lip of Dickerson and provide a radial extension since this would facilitate pouring of the cereal and reduce spilling of the milk. One would have been substituting one conventional lip design for another for the same type of dispensing container.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Doyle (US 3741427) as applied to claims 1,4,5,7,15,18,20,22,23,24,39,40,41,42,43 above, further in view of Siegel et al. (US 5209909).

As cited in the rejection of claims 1,4,5,7,15,18,20,22,23,24,39,40,41,42,43 above, Doyle teaches a first outer compartment, second inner compartment, nested together, a hole formed in the lip of the second compartment, and affixing the lip of the second compartment to the rim of first by adhesive or heat seal (Column 2, lines 25-29 Figures). Siegel also teach a first outer compartment, second inner compartment, nested together, a hole formed in the lip of the second compartment, and affixing the lip of the second compartment to the rim of first by adhesive, and further teach solvent welding or ultrasonic welding as other suitable "affixing" means(Column 4, line 65 to Column 5,line 6, Figures 5-7). Therefore it would have been obvious to modify Doyle and use ultrasonic welding to affix the lip to the rim since one would have been substituting one conventional means for affixing a lip to rim for another for the same purpose: to seal a two compartment container having a first outer compartment, second inner compartment, the compartments nested together, a hole formed in the lip of the second compartment, and the lip of the second compartment affixed to the rim of first compartment.

Claims 25,28-33 are rejected 35 U.S.C. 103(a) as being unpatentable over Dickerson (US 5706980) in view of Siegel et al. (US 5209909).

Regarding claims 25,28-31, Dickerson teaches a method of providing a fist outer compartment with a rim, a second inner compartment with a lip, dispensing milk into the first and cereal into the second, as recited in claims 28-31, placing the second compartment into the first such a fluid passageway is established between the two

compartments, and resting the lip *above* the rim when they are affixed to one another, as recited in claim 25, but is silent in teaching the lip rests *on top of* the rim and the two (Column 10, lines 3-15, Figures 2 and 3 in light of the Abstract).

Siegel also teaches providing a first outer and second inner compartment, dispensing a different product into each compartment, placing the second compartment into the first compartment yet maintaining a fluid passageway between the two compartments, and resting the lip of the second compartment above the rim of the first compartment. However, Siegel teaches the lip rests on top of the rim as method of affixing the rim to the lip. Siegel does so by extending the rim radially and extending the lip radially(See Figures 5-77, Column 4, line 59 to Column 5, line 6).

Therefore, it would have been obvious to modify Dickerson and extend the lip and rim radially such that the lip rests on top of the rim since one would have been substituting one method of affixing the lip of an second compartment to the rim of a first compartment for another for the same purpose: providing a sealed nesting arrangement of the second compartment within the first compartment that allows for dispensing of the contents of the first compartment.

Regarding claim 32, as discussed above in the rejection of claims 25,28-31, Dickerson teaches sealing the lip to the rim to secure the compartments(Column 3, lines 45-60), but is silent in teaching ultrasonic welding. However, Siegel et al. are relied on as evidence of using ultrasonic welding as a suitable means to seal the rim to the lip (column 4, line 64 to Column 5, line 6). Therefore, it would have been obvious to modify the method of Dickerson and include sonic welding since one would have been

substituting one method of sealing for another for the same purpose: sealing an inner compartment within an outer compartment such that the products stored within each are stored separately, but may be dispensed simultaneously.

Regarding claim 33, Dickerson teaches providing a cover and sealing the cover to the lip, and the cover allows dispensing of the milk and cereal (Column 10, lines 11-15, Column 9, lines 1-25).

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dickerson (5706980) in view of Siegel et al. (US 5209909) as applied to claims 25,28-33 above, further in view of Newarski (US 5496575).

As discussed above in the rejection of claim 25, Dickerson teaches providing first compartment and a second compartment with a pour opening, dispensing a liquid (e.g. milk) into the first, a solid (e.g. cereal) into the second, placing the second into the first compartment such that the lip abuts the rim, sealing the lip to the rim, and providing a passage between the two compartments to allow for the liquid through the pour opening. Dickerson also teaches covering the second compartment and placing the second compartment into the first (Column 10 lines 3-15). Dickerson further teaches the second compartment may be lidded prior to assembly when both compartments are in a pre-packaged form for consumers (Column 7, lines 17-40). Dickerson is silent in teaching any sanitizing steps wherein after the second compartment is covered the outside of the compartment is sanitized, the first compartment is sanitized before it's

filled with product so that when the covered second compartment is placed into a sanitized first compartment.

However, these sanitizing steps are well known steps in pre-packaging cereal and milk together in separate compartments. Newarski, for example, teaches the milk compartments are conventionally aseptically packaged so that the milk compartment can be stored with the cereal compartment (Column 1, lines 13-47, Abstract, Column 1, line 50 to Column 2, line30, Column 3, lines 1-50). Therefore, it would have been obvious to include the steps of sanitizing the first compartment before filling with milk and sanitizing the second compartment prior to placing it into the first filled compartment since it is notoriously well known that aseptically packaging milk involves the steps of sanitizing all surfaces of the interior of a package that will be in contact with milk, and in the case of Dickerson that would be the interior of the first compartment and the exterior of the second compartment.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dickerson (5706980)in view of Siegel et al. (US 5209909)as applied to claims 25,28-33 above, further in view of Newarski (US 5496575) and Siegel et al. (US 5209909).

As discussed above in the rejection of claim 25, Dickerson teaches providing first compartment and a second compartment with a pour opening, dispensing a liquid (e.g. milk) into the first, a solid (e.g. cereal) into the second, placing the second into the first compartment such that the lip abuts the rim, sealing the lip to the rim, and providing a passage between the two compartments to allow for the liquid through the pour

opening. Dickerson also teaches covering the second compartment and placing the second compartment into the first (Column 10 lines 3-15). Dickerson further teaches the second compartment may be lidded prior to assembly when both compartments are in a pre-packaged form for consumers (Column 7, lines 17-40 ). Dickerson is silent in teaching any sanitizing steps wherein after both compartments are both sanitized, the first compartment filled, the pour opening is sealed before the second compartment is placed into the first compartment, and the second compartment is filled after it has been placed into the first compartment.

Newarski, teaches the milk compartments are conventionally aseptically packaged so that the milk compartment can be stored with the cereal compartment (Column 1, lines 13-47, Abstract, Column 1, line 50 to Column 2, line30, Column 3, lines 1-50).

Therefore, it would have been obvious to include the steps of sanitizing the first compartment before filling with milk and sanitizing the second compartment prior to placing it into the first filled compartment since it is notoriously well known that aseptically packaging milk involves the steps of sanitizing all surfaces of the interior of a package that will be in contact with milk, and in the case of Dickerson that would be the interior of the first compartment and the exterior of the second compartment.

With respect to sealing the pour opening before filling the second compartment, Siegel et al who also teach a container similar to Dickerson (as discussed above in the rejection of claims 1,4-7,13, 20-24 under 35 U.S.C. 102 (b)) wherein both compartments may be sealed with the same cover, but are relied as evidence of the conventionality of

alternatively sealing the pour opening of the second compartment in order to maintain a hermetic seal around a more environmentally sensitive first product in the first compartment (Column 5, lines 34-68). Therefore, it would have been obvious to further seal the pour opening before inserting the second compartment into the first since it was well known that this will preserve the a more sensitive first product, when filling the second. One would have been substituting one assembly step for another for the same purpose: filling a two-compartment container wherein a first component in the outer first compartment is more environmentally sensitive than the second.

### ***Response to Arguments***

Applicant's arguments with respect to the amended claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen  
Examiner  
Art Unit 1761  
October 31, 2002

  
MILTON I. CANO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700